

REMARKS

Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24 and 103-109 are all the claims pending in the application. By this Amendment, Applicant amends claims 1-4, 8, 17, 18, and 103-109.

I. Preliminary Matters. The Examiner did not indicate acceptance of the drawings. Applicant respectfully requests that the Examiner indicate acceptance of the drawings in the next communication.

II. Summary of the Office Action. The Examiner objected to claim 8 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, 105, 106 and 109 were rejected as indefinite. Claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24 and 103-109 were rejected as anticipated by Hisateru (JP Pub No. 53-139754). Claim 20 was rejected as obvious over Hisateru and claim 8 was rejected as obvious over Hisateru in view of Yamaoka (US 5484619).

III Claim Rejections Under 35 USC 112, second paragraph. Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, 105, 106 and 109 were rejected as indefinite with respect to whether smoke constitutes the treatment gas, groups of animals (claim 17) and respiratory and circulatory systems for meat (claims 18 and 106). To expedite examination, the office action recited certain interpretations of the claims. Claims 1-4, 8, 17, 18, and 103-109 have been amended to substantially conform those claims to the interpretations recited in the office action. The amendment to claim 8 also cures the improper dependent form of claim 8. Applicant therefore respectfully requests that the Examiner withdraw the indefiniteness rejection of claims 1, 4, 6-11, 13, 14, 17, 18, 20, 24, 105, 106 and 109.

IV. Claim Rejections Under 35 USC 102. Claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24 and 103-109 were rejected as anticipated by Hisateru. Claims 1-4, 18 and 103-109 have been amended to add “by forming carboxymyoglobin.” Basis is provided, for example, by originally filed claim 8. Applicant therefore respectfully submits that the Examiner must withdraw the rejection of claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24 and 103-109 because Hisateru does not meet the limitation of “by forming carboxymyoglobin.” Further, unlike tasteless smoke and carbon monoxide, carbon dioxide does not react with hemoglobin to form carboxymyoglobin. Also, Hisateru does not contain an enabling disclosure and therefore cannot qualify as a reference. MPEP 2121.01. Page 4, second full paragraph of Hisateru requires the use of a sealed package with a “predetermined” amount of CO<sub>2</sub>, but does not specify what amount this is.

V. Claims Rejections Under 35 USC 103. The rejection of claim 20 as obvious over Hisateru must be withdrawn. Claim 20 is dependent on claim 1, which is allowable, so claim 20 must also be allowable.

The rejection of claim 8 as obvious over Hisateru and Yamaoka US 5484619 also must be withdrawn because the combination of Hisateru and Yamaoka does not meet the limitation (from claim 1) of using said animal’s membranes to super-purify partially purified smoke to prevent smoke flavor from being imparted to said meat. Claims 1-4, 18, and 103-109 have been amended to add the limitation that the smoke imparts smoke flavor, to clarify that the animal’s membranes prevent imparting of smoke flavor. Basis for this amendment is found in page 16, line 20, of this application, and col. 6, lines 2-5, of applicant’s US patent 5972401 (which patent has been incorporated herein by reference), which described partially purified smoke as “containing odor and taste imparting particulate matter and vapors flowing freely in contact with

the edible matter, imparting a smoke flavored taste.” These claims also have been amended to recite more clearly that the animal’s membranes prevent imparting smoke flavor, to make this limitation more explicit. The combination of Hisateru and Yamaoka does not meet the limitation of applying partially purified smoke that imparts a smoke flavor, and then using the animal’s membranes to prevent imparting of smoke flavor to meat.

In addition, Yamaoka would destroy the function of Hisateru. Hisateru is directed to providing carbon dioxide to live fish, while Yamaoka is directed to providing smoke to pieces of fish that have already been killed and therefore whose circulatory systems have been destroyed. For example, column 1, lines 65-68, of Yamaoka specifies that “pieces of fish or other meat are placed one next to another and exposed to the smoke from the smoke-cooling unit.” For a further example, column 3, lines 39-40, refers to “pieces of fish or meat properly arranged in the smoking chamber similar to the conventional ones.” Similarly, column 3, lines 45-49, state “Tuna is properly sterilized, with decomposition and discoloration prevented, by applying the smoking of this invention for about 8 hours when it is cut into thin, bitesize slices and about 24 hours when it is cut into larger slices approximately 3 cm thick.” Column 5, line 9, refers to “Pieces of raw fish or meat properly arranged in the smoking chamber. . . .” The sole example in Yamaoka, from column 5, line 51, to column 7, line 3, refers repeatedly to “slices.” The limitation in the second to last line of claim 1 refers to “tuna meat.” Thus, Hisateru is directed to an internal method of applying smoke, by using a live fish’s circulatory system, while Yamaoka is directed to an external method of applying smoke, by exposing cut pieces of dead fish to smoke. Obviously, cutting the fish into pieces as required by Yamaoka would kill the fish and destroy the circulatory system, and therefore destroy the function of Hisateru, which requires the

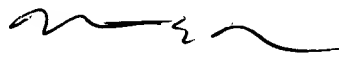
circulatory system of a live fish to function. Accordingly, Yamaoka cannot be combined with Hisateru to render the invention obvious. In any event, claim 8 is dependent on claim 1, which is allowable.

VI. Telephone Interview. The courtesy of a telephone interview with the Examiner and Primary Examiner Keith Hendricks is gratefully acknowledged. In the interview, a prior draft of this response was discussed, and the amendments made above were indicated as overcoming the objections to the claims and the novelty rejections. The combination of Hisateru and Yamaoka was also discussed with regard to obviousness, and the Examiners indicated that the novelty rejection may be changed to an obviousness rejection.

VII. Conclusion. In view of the above, it is respectfully submitted that this application is now in condition for allowance, and an early action to that effect is earnestly solicited. If the claims would be in condition for allowance except for minor revisions, Applicant's attorney courteously invites a telephone interview initiated by the Examiner so that such revisions can be effected by Examiner's amendment.

Respectfully submitted,

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Martin E. Hsia  
Registration No. 32,471  
Cades Schutte LLP  
P.O. Box 939  
Honolulu, Hawaii 96808  
Tel. (808) 544-3835